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Supreme Court of the United States

OCTOBER TERM, 1961

NO. 468

In the Matter of the Application of

STEVEN I. ENGEL, DANIEL LICHTENSTEIN, MONROE LERNER, LENORE LYONS and LAWRENCE ROTH,

Petitioners,

—against—

WILLIAM J. VITALE, JR., PHILIP J. FREED, MARY HARTE, ANNE BIRCH and RICHARD SAUNDERS, constituting the Board of Education of Union Free School District Number Nine, New Hyde Park, New York,

Respondents,

directing them to discontinue a certain school practice,

—and—

HENRY HOLLENBERG, ROSE LEVINE, MARTIN ABRAMS, HELEN SWANSON, WALTER F. GIBB, JANE EHLEN, RALPH B. WEBB, VIRGINIA ZIMMERMAN, VIRGINIA DAVIS, VIOLET S. COX, EVELYN KOSTER, IRENE O'ROURKE, ROSE MARIE PETELENZ, DANIEL J. REEHIL, THOMAS DELANEY and EDWARD L. MacFARLANE,

Intervenors-Respondents.

OBJECTIONS OF INTERVENORS-RESPONDENTS TO MOTION BY THE AMERICAN JEWISH COMMITTEE AND THE ANTI-DEFAMATION LEAGUE OF B'NAI B'RITH FOR LEAVE TO FILE A JOINT BRIEF AS *AMICI CURIAE*

THOMAS J. FORD
Counsel for
Intervenors-Respondents
117 Pennsylvania Avenue
Brooklyn 7, New York

Of Counsel:

PORTER R. CHANDLER
RICHARD E. NOLAN

Dated: New York, New York
January 18, 1962

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This litigation involves the validity under the First and Fourteenth Amendments to the United States Constitution of the "Regents' Prayer", a voluntary non-denominational prayer composed and recommended by the Board of Regents of the University of the State of New York and adopted for use in the public schools of Union Free School District No. 9, New Hyde Park, New York, pursuant to resolution adopted by respondent Board of Education on July 8, 1958. Each of the parties hereto has a direct and immediate interest in the outcome of the case and in the constitutional status of the Regents' Prayer. Petitioners, two of whom are of the Jewish faith, are taxpayers of the School District and the parents of children actually attending the public schools of the District (R. 11-12, 54).* Each of the intervenors-respondents is and, throughout the course of this litigation has been, a taxpayer of the district and a parent of children actually attending the schools of the district (R. 54). They are the parents of thirty-seven children attending the various schools of the district and these intervenors-respondents include members of the Hebrew, Protestant and Catholic faiths, and one (Evelyn Koster) who is a member of no organized church. Respondent School District has an obvious interest in this litigation which will affect practices approved by it for use in its schools. The Board of Regents of the University of the State of New York has participated as *amicus curiae* throughout the litigation in the courts of New York, and has moved for leave to file a brief *amicus curiae* in this Court, because of its obviously direct interest in sustaining the constitutional validity of the Prayer, composed and recommended by it.

Intervenors-respondents have refused consent to and presently oppose the application of the American Jewish

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* Except as otherwise identified, references are to pages of the Record on Appeal submitted to this Court by petitioners in support of their petition for writ of certiorari.

Committee and the Anti-Defamation League of B'nai B'rith. It is clear from the moving papers that these organizations have no direct interest in this litigation. They do not base their request for participation on the ground that they represent taxpayers within the School District or that they represent any parents of children actually attending the schools of the District. Neither do they demonstrate that they are actively interested in any other cases involving analogous issues, the outcome of which may be directly or immediately influenced by this Court's determination of the validity of the Regents' Prayer. In short, these organizations seek to participate because of a general interest in the judicial construction of the First Amendment. It is submitted that this general interest is not a sufficient basis for permitting such participation especially where there are many other organizations representing diverse civic, educational or religious groups which may seek, on the basis of a similar general interest, to file *amicus curiae* briefs either in support of or in opposition to the Prayer. We have already been advised that at least four other such organizations are interested in filing such briefs in this case, some in support of, and some in opposition to, the position of the petitioners; and undoubtedly there will be others.

Counsel for intervenors-respondents are reluctant to approve any of these requests and do not confine their opposition to the present application of the American Jewish Committee and the Anti-Defamation League. It is our position that the orderly presentation of this case requires that participation be limited to parties having a direct interest in the constitutional status of the Regents' Prayer or having a right to file *amicus curiae* briefs under the Rules of this Court. The American Jewish Committee and the Anti-Defamation League have neither a direct interest in this litigation nor a right to participate under the Rules of this Court. It is submitted that they should not be permitted to participate as *amici curiae*.

The moving organizations are incorrect in assuming, at pages 3-4 of their motion, that they can present any novel argument that prayer "has a separate and distinct meaning both with respect to form and content for the adherents of each sect and denomination" and that the Regents' Prayer is objectionable to a number of sects and denominations as "a form of prayer devised by a secular authority". This is precisely the argument which counsel for petitioners have consistently presented in the courts below. No claim is or can be made that counsel for petitioners are not fully competent in all respects to present this and all other arguments to this Court.

It is therefore respectfully submitted that, under these circumstances, the wholesale filing of *amici* briefs by private organizations claiming some indirect interest in the litigation can serve no useful purpose and can lead only to unnecessary complications. For that reason it is respectfully submitted that the present motion by the American Jewish Committee and the Anti-Defamation League for leave to file a joint brief *amici curiae* should be denied.

Dated: New York, New York
January 18, 1962

Respectfully submitted,

THOMAS J. FORD
Counsel for
Intervenors-Respondents
117 Pennsylvania Avenue
Brooklyn 7, New York

Of Counsel:

PORTER R. CHANDLER
RICHARD E. NOLAN